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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

TEAMSTERS FREIGHT LOCAL UNION NO. 480
Petitioner,

VS.

RYDER TRUCK LINES, INC.
Respondent.

SUPPLEMENTAL APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH JUDICIAL CIRCUIT

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

CIVIL ACTION NO. 77-3243-NA-CV

Ryder Truck Lines, Inc.
Plaintiff

vs.

Teamsters Freight Local
Union No. 480, et al.
Defendants

MEMORANDUM OPINION

This is an action for an injunction and for damages for breach of collective bargaining agreements brought pursuant to the terms of Section 301 of the Labor Management Relations Act of 1947, as amended, 29 USC Section 185. The jurisdiction of the Court is not disputed.

This action was instituted by a verified complaint on May 17, 1977, seeking an injunction against Defendant Teamsters Freight Local Union No. 480 and individual Defendants Luther Watson, Frank Hopkins, Turner Brim and Clyde Powers. A Temporary Restraining Order issued upon the Court's finding that the Defendants and each of them had committed and were committing a wrongful breach of the collective bargaining agreements, and restraining the Defendants, *inter alia* from engaging in any strike, work stoppage, or work interference at Plaintiff's Nashville terminal. That Temporary Restraining Order was filed with the Clerk where it was received at 1:30 p.m. on May 17, 1977.

On May 23, 1978, Plaintiff filed an Amended Complaint against Defendant, Teamsters Local Freight Union No. 480, for $50,000.00 compensatory damages and $150,000.00 punitive damages.

This matter came on for trial without a jury on Monday, January 12, 1981.

Upon the testimony of the witnesses, the evidence produced at the trial, stipulated and undisputed facts, the entire record in this action, and the written submissions of counsel for the parties, the Court has reached the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. The Plaintiff is an interstate motor common carrier and maintains a terminal facility with one (1) office and shop in Metropolitan Nashville-Davidson County, Tennessee.

2. The Defendant, Teamsters Freight Employees Local Union No. 480, is an unincorporated labor association which acts as collective bargaining agent for employees.

3. The Plaintiff and Defendant, Teamsters Freight Employees Local Union No. 480, (hereinafter Local 480) are signators to collective bargaining agreements, known as the NATIONAL MASTER FREIGHT AGREEMENT and SOUTHERN CONFERENCE AREA OVER-THE-ROAD, LOCAL CARTAGE, OFFICE CLERICAL and GARAGE SUPPLEMENTAL AGREEMENTS. The applicable National and Supplemental Agreements at the time of the matters which gave rise to this litigation are a part of the record in this action and were marked as Exhibit 2 at the trial.

THE CONTRACTUAL BACKGROUND

4. Title 29, Section 141(b), USC, provides:

> "(b) Industrial strife which interferes with the normal flow of commerce and with the full production of articles and commodities for commerce, can be avoided or substantially minimized if employers, employees, and labor organizations each recognize under law one another's legitimate

rights in their relations with each other, and above all recognize under law that neither party has any right in its relations with any other to engage in acts or practices which jeopardize the public health, safety, or interest.

It is the purpose and policy of this chapter, in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce."

5. In the legislative history of Section 301(a) of the Labor Management Relations Act, 29 USC Section 1985, the following appears:

"If unions can break agreements with relative impunity, then such agreements do not tend to stabilize industrial relations... The chief advantage which an employer can reasonably expect from a collective labor agreement is assurance of uninterrupted operation during the term of the agreement. Without some effective method of assuring freedom from economic warfare for the term of the agreement there is little reason why an employer would desire to sign such a contract." *H. R. Conf. Rep. No. 510, 80th Congress, 1st Session 42 (1947). S. Rep. No. 105, 80th Congress, 1st Session, at p. 16 (1947).*

6. Article 8, Section 2, of the NATIONAL MASTER FREIGHT AGREEMENT, in pertinent part, reads as follows:

"(a) The parties agree that all grievances and questions of interpretation arising from the provisions of this Agreement shall be submitted to the grievance procedure to determination. Accordingly, except as specifically provided in other Articles of the National Master Freight Agreement, no work stoppage, slowdown, walkout or lock out shall be deemed to be permitted or authorized by this Agreement except:

(1) failure to comply with a duly adopted majority decision of a grievance committee established by the National Master Freight Agreement or Supplemental Agreement;

(2) a National Grievance Committee deadlock of a grievance rendered pursuant to the procedures provided herein; and

(3) failure to make health and welfare and pension payments in the manner required by the applicable Supplemental Agreement...

* * * * * * * * * * *

The Local Union shall give the Employer a twenty-four (24) hour prior written notice of the Local Union's authorization of strike action which notice shall specify the majority grievance committee decision or deadlocked National Grievance Committee decision providing the basis for such authorization...."

7. Article 44 of the SOUTHERN CONFERENCE AREA, OVER-THE-ROAD SUPPLEMENTAL AGREEMENT, Section 1 in pertinent part reads as follows:

"The Unions and the employers agree that there shall be no strikes, lockouts, tieups, or legal proceedings without first using all possible means of settlement as provided for in this Agreement and in the National Agreement, if applicable, of *any controversy* which might arise. . . ." (Emphasis supplied)

8. In the trucking industry, in furtherance of the policy of facilitating the flow of commerce and maintaining industrial peace, the parties through the collective bargaining process negotiate the specific terms of wages, benefits, working conditions, and other benefits for union members in exchange for guarantees of continued work without stoppage or interference. Article 8, Section 2(a) of the NATIONAL MASTER FREIGHT AGREEMENT, as quoted above, sets forth the precise conditions, negotiated at arms length between the parties, under which a union may legally call or authorize a strike.

9. In order to facilitate the orderly resolution of controversies arising between unions and their members, on the one hand, and trucking companies, on the other, a detailed and specific grievance procedure is set forth in the collective bargaining agreements.

10. In the event of a failure or refusal by management to comply with the final decision reached in the grievance process, the remedy provided to the union and its members is the economic sanction of strike, in addition to other remedies provided by law.

11. In the event of a failure or refusal by the union or its members to abide by the "no strike" language of the collective bargaining agreements, Title 29, USC Section 185 provides a remedy to management in the nature of a suit for money damages, in addition to injunctive relief and other remedies provided by law.

THE "MOLE HILL"

12. Plaintiff did not have a maintenance shop at its St. Louis Terminal on May 16, 1977 or previously. It had only a "fuel lane" where trucks could be fueled, and where windshields could be washed, as appropriate.

13. Pursuant to a local contract with Teamsters Local 618, Plaintiff had one employee at its St. Louis Terminal who acted

as a "fuel man", and who also washed windshields as appropriate, when he was on duty. There was no formal policy or procedure regarding the washing of windshields when he was not on duty.

14. For an unspecified time prior to the first of May, 1977, some of the supervisory personnel of Plaintiff from time to time left the terminal office to wash windshields.

15. When it became known to John Geldbach, the new terminal manager at Plaintiff's St. Louis terminal, that some supervisory personnel were leaving the terminal office to wash windshields, he, with the concurrence of his supervisors, instituted a policy that supervisory personnel would not be involved in the washing of windshields, and that drivers would be expected to wash their own windshields as appropriate, when the "fuel man" was not on duty, effective on or shortly after the first of May, 1977.

16. There was no testimony at the trial suggesting that any breach of this newly instituted policy had occurred—or in fact that any driver had asked to have his windshield washed by anyone other than himself when the "fuel man" was not on duty—prior to the events occurring on May 16, 1977, involving drivers Boyd and Thomas.

17. Although the direct testimony of the drivers Boyd and Thomas would suggest clearly that their windshields routinely had been washed by others than themselves, Mr. Thomas had also testified by deposition, which testimony was put into the trial record on his cross-examination, to the effect that: "... on other occasions, we called him (Frank Hopkins, the local 480 business agent in Nashville) and told him that our windshields were dirty and we needed the windshields clean and they wouldn't clean them..."

18. On May 16, 1977, following their mandated rest, drivers Boyd and Thomas, employees of Plaintiff and members of

Defendant Local 480, were called by the dispatcher and advised to be at the St. Louis terminal within the normal two hour period to accept their dispatches.

19. The drivers Boyd and Thomas asked to be advised of their destinations. When they were not advised as to where they were being sent, and were told that that information would be given to them at the terminal, they called Mr. Hopkins, their Nashville business agent, to be advised as to whether they should accept the two-hour call and proceed with their dispatch. Mr. Hopkins did not testify in this action. The drivers, however, testified that Mr. Hopkins advised them to go ahead and accept the call and proceed to the terminal within the two hour period.

20. When the drivers Boyd and Thomas arrived at the St. Louis Terminal of Plaintiff, they clocked in and conducted walk-around inspection of their units. They then reported to the dispatcher that their windshields were dirty, and requested that the windshields be cleaned by the company.

21. There was no testimony that the windshields were dirty to the point of being any safety hazard. In fact, the driver Boyd testified the tractors were equipped with windshield washers and that, as to any accumulated dirt or debris on the windshield, he routinely simply adjusted to it in his driving.

22. After consulting with his superior, the dispatcher advised the drivers Boyd and Thomas that the "fuel man" was not on duty, that the company would not wash their windshields, and that they would need to wash their own windshields and go ahead on their dispatch.

23. The drivers Boyd and Thomas then called their Nashville business agent, Frank Hopkins, a second time from St. Louis. Mr. Hopkins consulted with Local 480 President, Luther Watson, during this call. After their telephone conversation with Mr. Hopkins, the drivers refused to wash their own windshields or to proceed with their dispatch unless the company would wash the windshields.

24. When confronted with this position by the drivers Boyd and Thomas, Plaintiff's St. Louis dispatcher again consulted his superior. He then advised the drivers Boyd and Thomas that, unless they proceeded as previously directed, they would be considered to have "voluntarily quit" their jobs for refusal to obey instructions of their employer. After having been apprised of the company's position, the two drivers continued to refuse to proceed as directed. The drivers were then instructed by the dispatcher that it was the position of Plaintiff that the drivers had "voluntarily quit" and that they should leave the premises.

25. After being advised of the position of Plaintiff that they had voluntarily quit, and after being requested to leave the premises, both drivers refused to leave the terminal at St. Louis.

26. The police were called to remove the drivers from the premises, if necessary. When the police arrived at the Plaintiff's St. Louis terminal, Patrolman Richard Skidmore requested the drivers Boyd and Thomas to leave the premises peacefully in order that he would not have to arrest them, and so that they would not have to submit to booking and other normal police procedures. He also advised the dispatcher that the only way he could remove the drivers from the premises would be upon the swearing out of a warrant for trespassing. The dispatcher agreed to sign the warrant.

27. At this point, drivers Boyd and Thomas called Frank Hopkins, their Nashville business agent, a third time. After consulting with him by telephone, they advised the dispatcher that the company could fire them and have them arrested, but that they would not voluntarily leave the premises, and that they did not voluntarily quit their jobs.

28. After staying at the Ryder Terminal approximately thirty (30) minutes, and after repeated attempts to have the drivers Boyd and Thomas leave the premises peacefully to avoid arrest, Patrolman Richard Skidmore of the St. Louis Police Department arrested them and took them to jail.

29. Both of these drivers are black. There was an allegation that the failure to clean their windshields was somehow racially motivated. This allegation is totally unsupported by the proof.

THE "MOUNTAIN"

30. Shortly after the third telephone conversation between drivers Boyd and Thomas and their Nashville business agent, Frank Hopkins, Local 480 president Luther Watson and Local 480 business agent Turner Brim set up a meeting with Plaintiff's representative James D. (Buck) Barton and Frank Hopkins at the Nashville Ryder Terminal.

31. At approximately 6:00 p.m. on May 16, 1977, Local 480 set up a picket line at the Nashville Ryder Terminal, and a strike and work stoppage began.

32. There is disputed testimony in the record regarding whether Defendant called the strike in the first instance, or whether Defendant simply authorized and "took over" the strike after it had already begun. The Court finds as a fact that Defendant, through Luther Watson, Frank Hopkins, and Turner Brim, instituted a strike or work stoppage at the Nashville terminal of Plaintiff at or about 6:00 p.m. on May 16, 1977.

33. Luther Watson, president of Teamsters Local 480, testified that he "calls the shots" for that local union. He testified that never before, since he had been president of the union, had the members either started a strike, or ended a strike, other than at his specific direction.

34. Defendant offered no explanation as to how the members of Local 480 could have known of what had occurred at St. Louis other than through Luther Watson, Frank Hopkins, or Turner Brim.

35. Defendant did not present testimony from Frank Hopkins or Turner Brim.

36. Defendant did not present testimony from any other member of Local 480 suggesting how the Employer could have learned of any difficulty in St. Louis, or how there could have been a "spontaneous" picket line.

37. There was direct testimony from witnesses presented by Plaintiff that there was no trouble at the Nashville terminal of the Plaintiff until representatives of Local 480, one of whom was specifically identifyed as Turner Brim, came to various parts of the Nashville terminal facility and talked to employees after which the employees immediately left their work stations and went on strike. One of Plaintiff's witnesses, Carey Fussell, testified that he watched the employees leaving and going to the gate, and that there was no picket line at the gate as he watched the employees who had just been called out go toward the gate. Mr. Fussell testified that Mr. Brim told him specifically that the Union was going on strike.

38. Luther Watson, president of Local 480, testified that, after being consulted by Frank Hopkins regarding the windshield question, he left the matter up to Frank Hopkins to resolve. No explanation was offered by Defendant as to why Mr. Watson and Brim, as well as Hopkins, thereafter should have gone to the Nashville terminal of Plaintiff to consult with Mr. Barton, if something less serious than strike action was contemplated by the Union.

39. In a telegram dated several days later, and sent by Local 480 president Luther Watson, Defendant acknowledged and declared that it authorized the strike. (Exhibit 3)

40. The strike was terminated, and Plaintiff's employees who were members of Local 480 went back to work at approximately 2:00 p.m. on May 17, 1977, after the Court had entered a temporary restraining order enjoining the continuation of the strike or work stoppage.

41. Although there was defense proof suggesting that Defendant's members ended the picket line, and the strike was over, in the late morning of May 17, the driver Thomas testified that he and the driver Boyd went to the Ryder Terminal at approximately 1:00 p.m. on that day after they returned to Nashville and made a visit to the union hall. He testified that the strike was still in progress when they arrived, and that the picket line was still up when they left.

42. This Court entered a Temporary Restraining Order on May 17, 1977, which was received for entry by the Clerk at 1:30 p.m.

SUBSEQUENT GRIEVANCE PROCEDURE OF THE "MOLE HILL"

43. Plaintiff experiences approximately thirty-six hundred (3600) grievances which are docketed per year, that is, which are not settled at the local level prior to being docketed for consideration by a grievance committee. This volume of grievances is illustrative of the extremely broad "any controversy" character of the grievance process.

44. The drivers Boyd and Thomas grieved the termination of their employment as contemplated by the grievance procedure established under the collective bargaining agreements.

45 The grievance committee decision was in favor of the drivers Boyd and Thomas, as to their claim of wrongful discharge, and provided that they be returned to work, with back pay, and that they be compensated for the air fare from St. Louis to Nashville.

46. Thus, the rights of the union and its members, sought to be protected by the national labor policy regarding industrial peace and commercial productivity, were protected.

GRIEVANCE PROCEDURE OF THE "MOUNTAIN" AND THE "CONDITION PRECEDENT" DEFENSE

47. After obtaining a Temporary Restraining Order from this Court, in which the Court found Defendant to have engaged in an illegal strike or work stoppage, Plaintiff filed a grievance, utilizing the grievance procedure under the collective bargaining agreement, as to the illegality of the strike.

48. Plaintiff's grievance asserting the illegality of the strike was taken up by the National Grievance Committee on September 8, 1977. The National Grievance Committee at that time did not reach any decision as to the grievance and instead "postponed" action on the grievance.

49. The National Grievance Committee was again convened to consider this grievance on March 8, 1978. Again, the National Grievance Committee failed to make a decision regarding the grievance. This time the National Grievance Committee sent the matter back to the parties for settlement.

50. Article 8, Section 2(a) of the NATIONAL MASTER FREIGHT AGREEMENT establishes a deadlock of the National Grievance Committee as a condition precedent to the institution of any damage suit action in circumstances such as are before the Court. That same provision, however, contains the following unambiguous language:

> "if a decision is not rendered within thirty (30) days after the co-chairman has convened the National Grievance Committee, the matter shall be considered deadlocked."

51. Plaintiff instituted this as an action for damages, by filing an Amended Complaint on May 23, 1978.

52. The National Grievance Committee had twice "deadlocked" under the contract language prior to the time Plaintiff initiated its Amended Complaint for money damages.

53. Plaintiff therefore has met any conditions precedent to the institution of an action for damages in this matter.

54. The May 16, 1977 strike at Plaintiff's Nashville terminal was not authorized by any of the exceptions to the no-strike clause in the collective bargaining agreement as set forth in Article 8, Section 2(a) of the NATIONAL MASTER FREIGHT AGREEMENT.

55. It is undisputed that the 24-hour notice requirement as a condition precedent to any strike, was not complied with by Defendant prior to the strike.

56. Defendant's strike at Plaintiff's Nashville terminal on May 16, 1977, was, therefore, an illegal strike, in violation of the specific terms of the collective bargaining agreements.

CONCLUSIONS OF LAW AND HOLDING

As indicated by the headings employed above, it is this Court's opinion that the parties in this case have classicly made a mountain out of a mole hill. The two drivers could have washed their own windshields. One of them testified that the trucks contain automatic washers, which he customarily used. If they thought this work was not their responsiblity and a dispute existed in relation to it, they could have filed a grievance over it upon their return to Nashville. The company used monumental bad judgment in causing the arrest of the two drivers. The union officials in Nashville, in frequent telephone conversation with the drivers, had the opportunity to give better advice to them than was given. The Company had the opportunity to defuse the situation when the matter was discussed between the union officials and Mr. Barton. In general, most of the actors in this drama performed with less than common sense.

The mutual errors leading up to the work stoppage cannot excuse the fact that there was an illegal strike in breach of the contract. When a union sanctions, approves, or incites an illegal strike, as the Court finds defendant has done in this case, it is liable in damages to the employer. *Penn. Packing Co. v. Amalgamated Meat Cutters, Local 195,* 497 F2d 880 (3rd Cir. 1974).

Compensatory damage proof was offered by plaintiff in the amount of $35,442.50 (Exhibit 11). This proof was undisputed by defendants. However, the Court has examined the proof and finds that of that amount, $26,238.50 was in "fixed overhead" for the period of time the men were on strike and $9,204.00 was in "lost revenue". The undisputed testimony was that the Nashville terminal was an unprofitable one. Proof of damages would ordinarily entail lost profits, i.e., the difference between "revenue" and "overhead" or costs. Since that is impossible in a losing operation, a different measure of damages is appropriate. However, to add the "lost revenue" to the "fixed overhead" is to compound the damages. Revenue received would offset the overhead and be credited against it. Since it was not received, it is simply not considered. By no logic can its loss be used to amplify the overhead. The Court therefore finds and fixes compensatory damages at $26,238.50.

Plaintiff sues also for punitive damages. In a 5-4 opinion of 1979, the Supreme Court established a *per se* bar to the award of punitive damages against a union in a suit for breach of the duty of fair representation. *I.B.E.W. v. Foust,* 442 US 12, 60 L. Ed. 2d 698, 99 S. Ct. 2121 (1979). This *per se* rule has not been expanded to all suits against a union under 29 USC 185 by the Supreme Court, a split of authority exists among the circuits, (see Ironton Coke Corporation v. Oil Chemical & Atomic Workers International Union, 491 F. Supp. 70, 72-74 (S. D. Ohio 1980)) and no controlling authority is extant in this circuit. A ruling by the Court on the question is unnecessary to decision in the instant case. Upon the facts here presented, the conduct of the union was not so egregious as to justify the award of punitive damages, and such an award would be in appropriate if permissible.

Plaintiff will make application for attorney's fees with appropriate affidavits of time expended and usual and customary charges. Defendant will be given the opportunity to respond. A hearing thereon will be sceduled if deemed necessary.

An appropriate order will enter.

/s/ Thomas A. Wiseman Jr.
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
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CIVIL ACTION NO. 77-3243-NA-CV

Ryder Truck Lines, Inc.
Plaintiff

vs.

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Union No. 480, et al
Defendants

ORDER

In accordance with the Memorandum Opinion filed contemporaneously herewith, judgment is awarded to plaintiff in the amount of $26,238.50 and costs.

/s/ Thomas A. Wiseman Jr.
United States District Judge